

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT DENIED BY
MASON COUNTY TO ROBERT AND JUNE
DONDERO,

ROBERT AND JUNE DONDERO,
Appellants,

v.

MASON COUNTY,

Respondent.

SHB NO. 87-1

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a denial by Mason County for a shoreline substantial development permit for a pier, ramp and float on Hood Canal, came on for hearing before the Shorelines Hearings Board; Lawrence J. Faulk, Chairman and presiding, Judith A. Bendor, Wick Dufford, Ronald Bailey, Nancy R. Burnett, and Les Eldridge, Members, on July 1, 1987, at Shelton, Washington. The proceedings were officially reported by Betty Koharski.

1 Appellants Robert and June Dondero were represented by D. Anthony
2 Weeks, Attorney at Law. Respondent Mason County was represented by
3 Deputy Prosecuting Attorney, Michael Clift.

4 Witnesses were sworn and testified. Exhibits were admitted and
5 reviewed, and oral argument was heard. From the testimony, evidence
6 and argument, the Board makes these

7 FINDINGS OF FACT

8 I

9 The subject development is a 33 foot pier, 32 foot ramp and 20
10 foot float, located in Mason County on the Southeast shore of Hood
11 Canal near Belfair. The Mason County Shoreline Master Program (MSCMP)
12 designation of the area is urban; Hood Canal itself is a shoreline of
13 statewide significance as designated in the Shoreline Management Act
14 (SMA). Lots in the area are developed, with permanent and vacation
15 residences.

16 II

17 Appellants Robert and June Dondero seek approval from the
18 Shorelines Hearings Board of a substantial development permit denied
19 by Mason County for the subject pier, ramp and float. The pier, ramp
20 and float will be constructed of wood with the pier sitting on 11
21 pressure-treated piles. It will be located approximately in the
22 middle of appellant's property. The project will extend into the
23 water from the bulkhead approximately 85 feet from the bulkhead and
24 will be visible by the neighbors on either side.

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III

Appellants Dondero and their family have owned and used the property for approximately five years. It consists of 91 feet of waterfront, with a single family residence and sports court toward the water. The beach had been previously modified many years ago by a concrete bulkhead which extends waterward approximately 26 feet beyond neighboring bulkheads.

IV

On August 27, 1986 appellants Dondero applied for a substantial development permit for the subject project. The application described the project as a 48 foot pier, 32 foot ramp and 20 foot float.

On September 15, 1986, Mason County issued a declaration of non-significance. On October 28 and November 4, 1986, public hearings were held by the county commissioners concerning this application. On November 4, 1987, the Mason County Commissioners denied the shoreline substantial development permit.

V

Feeling aggrieved by the decision, the appellants requested review by this Board on January 2, 1987. On January 9, 1987, the request for review was certified by the Department of Ecology. A pre-hearing conference was held on February 11, 1987.

VI

Subsequent to the County's denial of the permit, the Department of Fisheries processed Dondero's application for a hydraulic project

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1 approval (HPA) for the project. Fisheries was concerned about the
2 overall length of the proposal. In response, Donderos agreed to
3 shorten the pier to 33 feet, thus shortening the overall proposal from
4 100 feet to 85 feet. The purpose was to avoid any grounding of the
5 float on eel grass beds.

6 An HPA was issued for the 85 foot project and this shortened
7 proposal is the project Dondero presented to this Board for review.

8 VII

9 Dondero's property lies to the east of a small cove, which is
10 partially enclosed at low water by a sizable sand spit curving out
11 from the uplands. The waterward end of the spit is approximately
12 one-quarter of a mile west of the Dondero project site.

13 VIII

14 Residential docks and piers are common along the shores of Hood
15 Canal. In the immediate vicinity of Dondero's lot such structures
16 however are not common. A few docks do exist there, and are visible
17 from residences in the area. The docks nearest Dondero's are
18 two-tenths of a mile to the west and about one-tenth of a mile to the
19 east.

20 IX

21 Objections to the Dondero proposal focused on perceived negative
22 impacts it might have on navigation, on aesthetics, and on the spit
23 (littoral drift). On the evidence before us, we were not convinced
24

1 that the project's likely impact in any of these matters will be
2 significantly adverse.

3 No credible evidence was presented supporting the concern that the
4 Dondero's project would have a negative effect on the beach drift
5 processes which feed the spit. To the contrary, such expert analysis
6 as there was, supported the probability of no effect.

7 Like all piers, this project serves navigation and to some extent
8 obstructs it. But, we find nothing in its placement or configuration
9 which would mark it more especially as a hazard to navigation than any
10 other simular structure on the urban designated Canal shoreline. The
11 elevated pier preserves high tide fish passage and fishing at the site.

12 Finally, we find that any aesthetic affront in the proposal is
13 outweighed by its affording the applicant the opportunity to enjoy the
14 water - a goal supported in the SMA and SMP. The pier is a relatively
15 unobtrusive presence in the visual field from most of the residences
16 in the neighborhood. It is a design suited to its site, not out of
17 scale with other docks in Hood Canal. The south shore of Hood Canal
18 is one highly developed for residential living, not a wild, pristine
19 natural shoreline.

20 X

21 Any Conclusion of Law which is deemed a Finding of Fact is hereby
22 adopted as such.

23 From these Findings the Board comes to these
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(5)

1 CONCLUSIONS OF LAW

2 I

3 The Shorelines Hearings Board reviews applications for shoreline
4 permits de novo, conscious, of course, that the burden of proof is on
5 the appellant in this case. The question to be decided by this Board
6 is: Is the proposed pier, ramp and float consistent with the
7 Shoreline Management Act (SMA) and the Mason County Shoreline Master
8 Program (MCSMP). RCW 90.58.140(2)(B).

9 II

10 The major policy considerations of the SMA are set forth in RCW
11 90.58.020. As related to shorelines of statewide significance these
12 policies include use preferences which are, in general, more
13 restrictive in the interests of environmental preservation than
14 elsewhere. These special policies, however, are to be applied within
15 the Act's larger philosophy of siting shoreline developments where
16 "reasonable and appropriate." This means, among other things, that
17 projects should be compatible with the existing character of the
18 neighborhood where they are proposed to locate.

19 Uses requiring a shoreline location, such as piers, are expressly
20 given priority in areas where they can be said to belong. Within this
21 context:

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23 Permitted uses in the shorelines of the state shall
24 be designed and conducted in a manner to minimize insofar

1 as practical, any resultant damage to the ecology and
2 environment of the shoreline area and any interferenc with
3 the public's use of the water.

4 III

5 The Shoreline Management Act does not require that there be a
6 compensating public benefit to offset the private benefits from every
7 development permit which is issued, but simply requires that the public
8 interest be considered in the processing of permits for any shoreline
9 development. Portage Bay - Roanoke Park Community Council v.
10 Shorelines Hearings Board, 92 Wn.2d 1, 593, P.2d 151 (1979). In that
11 case, the Washington Supreme Court upheld a decision by the Shorelines
12 Hearings Board allowing the issuance of a permit for a floating walkway
13 and services facility for eight houseboats.

14 The pier, ramp and float to be constructed by the Dondero's does
15 minimum damage to the ecology or environment of the subject shoreline
16 area, and does not interfere with the public's use of the waterfront,
17 inasmuch as the subject property is private and has been private for a
18 number of years. The appellant attempted to pursue a joint use dock
19 with his neighbors and they were not interested. The site in question
20 is designated "urban" by the Mason County Shoreline Master Program.
21 The proposal, to construct a dock is a water-dependent use permitted
22 outright in the urban environment. MCSMP Section 16.200(D)(1)

23 IV

24 The proposed dock is also consistent with the Act's policy that the
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1 public's opportunity to enjoy the physical and aesthetic qualities of
2 natural shorelines of the state shall be preserved to the greatest
3 extent feasible. Such enjoyment is often at its best when shorelines
4 are appreciated from navigable waters. The dock, as proposed, is a
5 gateway to those waters which will not degrade the physical or
6 aesthetic qualities of the shoreline.

7
8 V

9 The Dondero's shortening of the length of the proposal is an
10 improvement from the shorelines management standpoint. However, this
11 simple change to an uncomplicated design does not, for purposes of our
12 review, render it a fundamentally different project from that reviewed
13 by the County. We conclude that the Dondero's proposal, as presented
14 to this Board, offends neither the policies of the SMA nor the
15 provisions of applicable master program.

16 VI

17 Any Finding of Fact which should be deemed a Conclusion of Law is
18 hereby adopted as such.

19 From these Conclusions the Board enters this:
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ORDER

The denial of a substantial development permit to appellants Dondero by Mason County is reversed. The matter is remanded for issuance of a substantial development permit consistent with the revised design as described in Finding of Fact VI.

DONE this 4th day of ~~August~~^{September}, 1987.

SHORELINES HEARINGS BOARD ^{9/1/87}

Lawrence J. Faulk
LAWRENCE J. FAULK, Presiding

Wick Dufford
WICK DUFFORD, Chairman

Judith A. Bendor
JUDITH A. BENDOR, Member

Nancy R. Burnett
NANCY R. BURNETT, MEMBER

Les Eldridge
LES ELDRIDGE, Member

Ronald T. Bailey
RONALD T. BAILEY, Member